

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

TAMMY MCCRAE-COLEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:21-cv-666
	)	
STARTER HOMES PROGRAMS INC.,	)	
<i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**STARTER HOMES DEFENDANTS’  
RESPONSE TO PLAINTIFF’S FIRST MOTION IN LIMINE**

Pursuant to the Local Rules and this Court’s orders, Defendants Starter Programs Homes, Inc., d/b/a renttoownhomefinder.com and Lending Cloud Homes; Starter Home Investing, Inc., d/b/a renttoownhomefinder.com and Lending Cloud Homes; Xanadu Marketing, Inc., individually (assumed name Apex Page Builder), d/b/a cloudbasedpersonalloans.com and xanadutrucking.com; and Insurance-Reviewed.com (collectively hereinafter, “Defendants”) hereby respond to Plaintiff’s First Motion *in Limine* filed January 18, 2023 (D.E. #55) as follows:

First, Defendants hereby give notice that they withdraw the referenced exhibit (SHD000046). Plaintiff’s request to exclude the document is therefore moot.

Plaintiff’s motion *in limine*, however, also asks to exclude testimony regarding this opt-in made under the name “Tammy Cooley” (not “Coley”) in

October 2021. Defendants only recently discovered this third opt-in when they conducted a search of their electronic opt-in records for this misspelling. Prior searching was limited to the correct spelling of Plaintiff's name, not this misspelling. (SHD000046 is the record generated reflecting that search and is not a preexisting document.) This information was not known for more than a year, as Plaintiff's motion alleges, but instead only recently discovered by Defendants after the close of discovery. Therefore, the failure to provide it earlier in the litigation is "substantially justified." Fed. R. Civ. P. 37(c)(1).

Additionally, Plaintiff's defense is not prejudiced because her position as to this opt-in is presumably the same as her position as to the other, previously disclosed opt-ins—namely, that she simply made no such opt-in. Plaintiff has not offered any specific facts or documents related to the date of the first two opt-ins to rebut the likelihood that it was her, nor has she disclosed an expert with relevant knowledge to review technical data regarding those opt-ins. Instead, she rests on her straightforward denial, which presumably she does for the third opt-in as well. Unsurprisingly then Plaintiff's motion identifies no particular respect as to which her case is prejudiced by this new information. The lack of prior disclosure regarding an October 2021 opt-in is thus "harmless." Fed. R. Civ. P. 37(c)(1).

Accordingly, while Defendants will not utilize SHD000046 at trial, excluding truthful testimony from witnesses about what they have since discovered is not warranted under Rule 26(e) or Rule 37(c)(1).

WHEREFORE, Defendants respectfully ask that Plaintiff's motion *in limine* be denied.

Respectfully submitted, this the 25th day of January, 2023.

/s/B. Tyler Brooks

B. Tyler Brooks (N.C. Bar No. 37604)

Attorney for Starter Homes Defendants

LAW OFFICE OF B. TYLER BROOKS, PLLC

P.O. Box 10767

Greensboro, North Carolina 27404

Telephone: (336) 707-8855

Fax: (336) 900-6535

Email: btb@btylerbrookslawyer.com

*Counsel for Defendants*

### **CERTIFICATE OF WORD COUNT**

The undersigned counsel certifies that the foregoing brief complies with Local Civil Rule 7.3(d) in that, according to the word count feature of his word processing software, it contains less than 6,250 words, excluding those parts that are allowed to be excluded by the Rule. According to the word count feature, this brief contains 574 words.

/s/B. Tyler Brooks  
B. Tyler Brooks

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was served by email and First-Class U.S. mail on January 25, 2023.

/s/B. Tyler Brooks  
B. Tyler Brooks

#### **SERVED:**

Tammy McCrae-Coley  
1400 Battleground Avenue  
Suite 116-L  
Greensboro, NC 27408  
tammycoleyjd@gmail.com

*Pro se Plaintiff*